

REMARKS/ARGUMENTS

Claims 11-12, 17-25, 43-55, and 62-71 are now pending. Claims 11, 21, 54-55, and 62-65 are currently amended, and claims 56-61 have been cancelled, without prejudice or disclaimer of any previously claimed subject matter. Applicants reserve the right to pursue any cancelled or withdrawn subject matter in one or more continuation or divisional applications.

Rejections under 35 USC § 112

The Examiner has rejected claims 11-12, 17-25 and 43-65 under 35 U.S.C. 112, second paragraph as indefinite. Without prejudice or disclaimer, to promote prosecution, independent claim 1 has been amended to recite “a method for the treatment of a *Flaviviridae* virus infection in a host, comprising administering to a host infected with a *Flaviviridae* virus an effective treatment amount of a compound...” as suggested by the Examiner.

The Examiner has indicated that the term “substantially pure” in claim 21 is indefinite. Without prejudice or disclaimer, to promote prosecution, claim 21 has been amended to state that the compound is at least 85% by weight of the β -D isomer. Support for this amendment is found, e.g., on page 95, lines 10-12 of the specification.

The Examiner has indicated that the recitation “wherein R^2 is H” in dependent claim 54 does not have antecedent basis. Claim 54 has been amended to recite “wherein R^1 is an amino acid residue or acyl”. Claim 11, from which claim 54 depends includes the substituents an amino acid residue and acyl as R^1 .

Double Patenting Rejections

The Examiner has rejected claims 11-12, 17-25 and 43-65 over claims 1-32 of U.S. Patent No. 6,812,219 to LaColla *et al.* ('219) under the judicially created doctrine of obviousness-type double patenting. The claims of the '219 patent are directed to methods for the treatment of flaviviruses and pestiviruses with 2'-C-methyl ribofuranosyl pyrimidine nucleosides of the specific formula recited in the claims. The 1', 2' and 3'

hydroxyl groups of the compounds recited in the claims of the '219 patent are unsubstituted and potential prodrugs are not specified. In contrast, the amended claims herein are limited to specific 2'-C-methyl nucleosides with ester of an amino acid at the 3'-position. The amended claims are not obvious over the broad claims of the '219 patent. Withdrawal of the rejection is respectfully requested.

The Examiner has also rejected claims 11-12, 17-25 and 43-65 over claims 1-32 of U.S. Patent No. 6,914,054 to LaColla *et al.* ('054) under the judicially created doctrine of obviousness-type double patenting. The claims of the '054 patent are directed to methods for the treatment of hepatitis C with the specific 2'-C-branched nucleosides recited in the claims. The 1', 2' and 3' hydroxyl groups of the nucleosides recited in the claims of the '054 patent are unsubstituted and the prodrug substituents are not specified. The claims of the present application are now limited to specific 2'-branched nucleosides substituted at the 3'-position with an amino acid ester. The presently amended claims are not obvious in view of the claims of the '054 patent. Withdrawal of the rejection is respectfully requested.

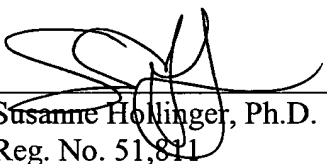
Applicants acknowledge that the Examiner has indicated that future provisional double patenting rejections may be made over co-pending U.S. Patent Applications Nos. 11/005,443 and/or 11/005,440.

Appl. No. 10/609,298
Amendment dated February 2, 2007
Reply to Office Action of August 2, 2006

Conclusion

Applicants respectfully submit that the current response and amendment overcomes the Examiner's rejections. Withdrawal of the outstanding rejections is respectfully requested. The Commissioner is authorized to charge any deficiency to Deposit Account 11-0980.

Respectfully submitted,

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